

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 20210007-EI  
ORDER NO. PSC-2021-0402-PHO-EI  
ISSUED: October 27, 2021

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on October 13, 2021, in Tallahassee, Florida, before Commissioner Andrew Giles Fay, as Prehearing Officer.

APPEARANCES:

MARIA JOSE MONCADA, DAVID LEE, RUSSELL A. BADDERS, and WADE LITCHFIELD, ESQUIRES, 700 Universe Boulevard, Juno Beach, Florida 33408  
On behalf of FLORIDA POWER & LIGHT COMPANY (FPL) and GULF POWER COMPANY (GULF).

DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St. Petersburg, Florida 33701 and MATTHEW R. BERNIER, and STEPHANIE CUELLO, ESQUIRES, 106 East College Avenue, Suite 800, Tallahassee, Florida 32301  
On behalf of DUKE ENERGY FLORIDA, LLC (DEF).

JAMES D. BEASLEY, J. JEFFRY WAHLEN, and MALCOLM N. MEANS, ESQUIRES, Post Office Box 391, Tallahassee, Florida 32302  
On behalf of TAMPA ELECTRIC COMPANY (TECO).

RICHARD GENTRY, CHARLES REHWINKEL, STEPHANIE A. MORSE, MARY A. WESSLING, PATRICIA A. CHRISTENSEN, and ANASTACIA PIRRELLO, ESQUIRES, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400  
On behalf of OFFICE OF PUBLIC COUNSEL (OPC).

JON C. MOYLE, JR. and KAREN PUTNAL, ESQUIRES, 118 North Gadsden Street, Tallahassee, Florida 32312  
On behalf of FLORIDA INDUSTRIAL POWER USERS GROUP (FIPUG).

JAMES W. BREW, and LAURA WYNN BAKER, ESQUIRES, 1025 Thomas Jefferson Street, NW, Eighth Floor, West Tower, Washington, D.C. 20007  
On behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS).

PETER J. MATTHEIS, and MICHAEL K. LAVANGA, ESQUIRES, 1025 Thomas Jefferson Street, NW, Eighth Floor, West Tower, Washington D.C. 20007

On behalf of Nucor Steel Florida, Inc. (NUCOR).

CHARLES MURPHY, and JACOB IMIG, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Advisor to the Florida Public Service Commission.

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Florida Public Service Commission General Counsel.

## **I. CASE BACKGROUND**

As part of the Florida Public Service Commission's (Commission) continuing Environmental Cost Recovery Clause (ECRC) proceeding, undertaken pursuant to Section 366.8255, Florida Statutes (F.S.), a hearing has been set in this Docket for November 2-4, 2021. The ECRC proceeding allows investor-owned electric utilities to seek recovery of their costs for approved environmental programs on an annual basis.

## **II. CONDUCT OF PROCEEDINGS**

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

## **III. JURISDICTION**

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, F.S. This hearing will be governed by Chapter 366, and by Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

#### **IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION**

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Subsection 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must follow the procedures for providing confidential electronic exhibits to the Commission Clerk prior to the hearing.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by electronic exhibit.

If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

#### **V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES**

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally

summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to three minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

## VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Rena B. Deaton*	FPL/GULF	1-10, 12
Michael W. Sole*	FPL/GULF	1-4, 11, 13
Gary P. Dean*	DEF	1-10
Timothy S. Hill*	DEF	1-3
Reginald Anderson*	DEF	1-3
Kim Spence McDaniel*	DEF	1-3
M. Ashley Sizemore*	TECO	1-9
Byron T. Burrows*	TECO	3

*\*All witnesses have been excused with testimony and exhibits to be included in the record.*

**VII. BASIC POSITIONS**

**FPL/GULF:** FPL's unified 2022 ECRC factors are reasonable and should be approved. FPL's unified 2022 ECRC factors include separate prior and current period true-ups for FPL and Gulf. The Commission also should approve FPL's proposed Miami-Dade Clean Water Recovery Center Project and modification to its Lowest Water Quality Source Project.

**DEF:** DEF's positions to specific issues are listed below.

**TECO:** The Commission should approve the compliance programs described in the testimony and exhibits of Tampa Electric witnesses Sizemore and Burrows for environmental cost recovery. The Commission should also approve Tampa Electric's calculation of its environmental cost recovery final true-up for the period January 2020 through December 2020, the actual/estimated environmental cost recovery true-up for the current period January 2021 through December 2021, and the company's projected ECRC revenue requirement and the company's proposed ECRC factors for the period January 2022 through December 2022 using the 2021 Settlement Agreement methodology.

**OPC:** The utilities bear the burden of proof to justify the recovery of costs they request in this docket. The utilities must carry this burden regardless of whether or not the Interveners provide evidence to the contrary. Further, the utilities bear the burden of proof to support their proposal(s) seeking the Commission's adoption of policy statements (whether new or changed) or other affirmative relief sought. Even if the Commission has previously approved a program, recovery of a cost, factor, or adjustment as meeting the Commission's own requirements, the utilities still bear the burden of demonstrating that the costs submitted for final recovery meet any statutory test(s) and are reasonable in amount and prudently incurred. Further, recovery of even prudently incurred costs is constrained by the Commission's obligation to set fair, just, and reasonable rates. Pursuant to Section 366.01, Florida Statutes, the provisions of Chapter 366 must be liberally construed to protect the public welfare.

The Commission must independently determine that each cost submitted for recovery, deferred or new, meets each element of the statutory requirements for recovery through this clause, as set out in Section 366.8255, Florida Statutes. Specifically, each activity proposed for recovery must be legally *required* to comply with a governmentally imposed environmental regulation that was enacted, became effective, or whose effect was triggered after the company's last test year upon which rates are based, and such costs may not be costs that are recovered through base rates or any other cost recovery mechanism.

**FIPUG:** Only costs legally authorized should be recovered through the environmental cost recovery clause. FIPUG maintains that the respective utilities must satisfy their burden of proof for any and all monies or other relief sought in this proceeding.

**PCS:** PCS Phosphate generally adopts the positions taken by the Florida Office of Public Counsel (“OPC”) unless a differing position is specifically stated.

**NUCOR:** Nucor’s basic position is that Duke Energy Florida, LLC (“DEF”) bears the burden of proof to justify the costs it seeks to recover through the ECRC and any other relief DEF requests in this proceeding.

**STAFF:** Staff’s positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff’s final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

### **VIII. ISSUES AND POSITIONS**

Proposed stipulations of all issues are set forth at Section X of this Order.

### **IX. EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
	<u>Direct</u>		
R.B. Deaton	FPL	RBD-1	Environmental Cost Recovery Final True-up January 2020 - December 2020 Commission Forms 42-1A through 42-9A
R.B. Deaton	FPL	RBD-2	Environmental Cost Recovery Actual/Estimated True-up January 2021 - December 2021 Commission Forms 42-1E through 42-9E
R.B. Deaton	FPL	RBD-3	Appendix I – Environmental Cost Recovery Projections - January 2022 - December 2022 Commission Forms 42-1P through 42-8P Appendix II - Calculation of Stratified Separation Factors

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
R.B. Deaton	GULF	RLH-1	Environmental Cost Recovery Final True-up January 2020 – December 2020 Commission Forms 42-1A through 42-9A
R.B. Deaton	GULF	RLH-2	Environmental Cost Recovery Actual/Estimated True-up January 2021 - December 2021 Commission Forms 42-1E through 42-9E
M.W. Sole	FPL	MWS-1	2015 Miami-Dade County Department of Environmental Resource Management ("MDC") Consent Agreement
M.W. Sole	FPL	MWS-2	June 2016 FDEP Consent Order
M.W. Sole	FPL	MWS-3	2016 MDC Consent Agreement Addendum
M.W. Sole	FPL	MWS-4	2019 MDC Consent Agreement Addendum
M.W. Sole	FPL	MWS-5	July 2020 Supplemental Salinity Management Plan
M.W. Sole	FPL	MWS-6	May 6, 2005 NPDES/IWW Permit Number FL0001562
M.W. Sole	FPL	MWS-7	FDEP's April 13, 2020 Notice of Intent to Issue Permit FL0001562
M.W. Sole	FPL	MWS-8	FDEP's April 25, 2016 Notice of Violation and Orders for Corrective Action
M.W. Sole	FPL	MWS-9	MDC and FPL Agreement
M.W. Sole	FPL	MWS-10	Turkey Point Conditions of Certification

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
M.W. Sole	FPL	MWS-11	South Florida Water Management District letter to FPL
M.W. Sole	FPL	MWS-12	MDC Board of County Commissioners Resolution and Memorandum recommending approval
M.W. Sole	FPL	MWS-13	ECRC Combined Project Summary
M.W. Sole	FPL	MWS-14	Sanford Plant July 13, 2021 Consumptive Use Permit
M.W. Sole	FPL	MWS-15	Sanford Consumptive Use Permit Technical Staff Report
Gary P. Dean	DEF	GPD-1	Forms 42-1A - 42-9A January 2020 – December 2020
Gary P. Dean	DEF	GPD-2	Capital Program Detail January 2020– December 2020
Gary P. Dean	DEF	GPD-3	Forms 42-1E – 42-9E January 2021 – December 2021
Gary P. Dean	DEF	GPD-4	Capital Program Detail January 2021 – December 2021
Gary P. Dean	DEF	GPD-5	Forms 42-1P – 42-8P January 2022– December 2022
Timothy Hill	DEF	GPD-5	Form 42-5P, page 23 of 23

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Reginald Anderson	DEF	GPD-5	Form 42-5P, pages 7 and 20 through 22 of 23
Kim Spence McDaniel	DEF	KSM-1	Review of Integrated Clean Air Compliance Plan
Kim Spence McDaniel	DEF	GPD-5	Form 42-5P, pages 1-4, 6-7 and 8-19 of 23
Sizemore	TECO	MAS-1	Final Environmental Cost Recovery Commission Forms 42-1A through 42-9A for the period January 2020 through December 2020
Sizemore	TECO	MAS-2	Environmental Cost Recovery Commission Forms 42-1E through 42-9E for the Period January 2021 through December 2021
Sizemore	TECO	MAS-3	Environmental Cost Recovery Forms 42-1P through 42-8P for the Period January 2022 through December 2022
Sizemore	TECO	MAS-4	Environmental Cost Recovery using the 2021 Settlement Agreement Methodology Forms 42-1P through 42-8P for the period January 2022 through December 2022

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

## **X. PROPOSED STIPULATIONS**

The proposed stipulations of all issues are set forth below. DEF, FPL/Gulf, TECO and Commission staff support the proposed stipulations. FIPUG, PCS Phosphate, NUCOR, and OPC

are willing to facilitate a Type 2 stipulation<sup>1</sup> of the issues. OPC clarified its position on each Type 2 stipulation as follows:

OPC takes no position on these issues, nor does it have the burden of proof related to them. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on these issues, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG, PCS Phosphate, and NUCOR concur in OPC's clarification.

Generic Issues:

**ISSUE 1: What are the final environmental cost recovery true-up amounts for the period January 2020 through December 2020?**

FPL	\$14,657,307	Over-recovery
GULF	\$2,150,848	Under-recovery
DEF	\$231,488	Over-recovery
TECO	\$4,237,191	Over-recovery

**ISSUE 2: What are the actual/estimated environmental cost recovery true-up amounts for the period January 2021 through December 2021?**

FPL	\$2,748,378	Over-recovery
GULF	\$3,816,668	Over-recovery
DEF	\$1,596,750	Over-recovery
TECO	\$4,289,623	Under-recovery

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<sup>1</sup> A Type 2 stipulation occurs on an issue when the utility and the staff, or the utility and at least one party adversarial to the utility, agree on the resolution of the issue and the remaining parties (including staff if they do not join in the agreement) do not object to the Commission relying on the agreed language to resolve that issue in a final order.

**ISSUE 3: What are the projected environmental cost recovery amounts for the period January 2022 through December 2022?**

FPL/GULF	\$364,050,992
DEF	\$12,277,061
TECO	\$26,342,444

**ISSUE 4: What are the environmental cost recovery amounts, including true-up amounts, for the period January 2022 through December 2022?**

FPL/GULF	\$344,979,487
DEF	\$10,448,824
TECO	\$26,413,881

**ISSUE 5: What depreciation rates should be used to develop the depreciation expense included in the total environmental cost recovery amounts for the period January 2022 through December 2022?**

The depreciation rates used to calculate depreciation expense shall be the rates that are in effect during the period the allowed capital investment is in service. FPL will use the depreciation rates that are ultimately approved by the Commission in Docket No. 20210015-EI. Depreciation rates agreed to in TECO's 2021 Settlement Agreement, and effective January 1, 2022 were applied to TECO's 2022 projection.

**ISSUE 6: What are the appropriate jurisdictional separation factors for the projected period January 2022 through December 2022?**

The appropriate jurisdictional separation factors for the period January 2022 through December 2022 are as follows:

**FPL/GULF:** Retail Energy Jurisdictional Factor - Base/Solar 95.8917%  
Retail Energy Jurisdictional Factor - Intermediate 94.7558%  
Retail Energy Jurisdictional Factor - Peaking 95.7721%  
Retail Demand Jurisdictional Factor - Transmission 90.2581%  
Retail Demand Jurisdictional Factor - Base/Solar 95.9314%  
Retail Demand Jurisdictional Factor - Intermediate 95.4287%  
Retail Demand Jurisdictional Factor - Peaking 95.1837%  
Retail Demand Jurisdictional Factor - General Plant 96.9001%  
Retail Demand Jurisdictional Factor - Distribution 100.0000%

**DEF:** Transmission Average 12 CP Demand – 71.994%  
 Distribution Primary Demand – 100.000%

Production Demand:  
 Production Base – 92.865%  
 Production Intermediate – 88.321%  
 Production Peaking – 90.678%

**TECO:** Energy: 100.00%  
 Demand: 100.00%

**ISSUE 7: What are the appropriate environmental cost recovery factors for the period January 2022 through December 2022 for each rate group?**

The appropriate environmental cost recovery factors for the period January 2022 through December 2022 for each rate group are as follows:

**FPL/GULF:**

<b>Rate Class</b>	<b>Environmental Cost Recovery Factor (cents/kWh)</b>
RS1/RTR1	0.299
GS1/GST1	0.309
GSD1/GSDT1/HLFT1/GSD1-EV	0.267
OS2	0.205
GSLD1/GSLDT1/CS1/CST1/HLFT2/GSLD1-EV	0.269
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.234
GSLD3/GSLDT3/CS3/CST3	0.216
SST1T	0.277
SST1D1/SST1D2/SST1D3	0.511
CILC D/CILC G	0.224
CILC T	0.199
MET	0.247
OL1/SL1/SL1M/PL1	0.046
SL2/SL2M/GSCU1	0.206
<b>Total</b>	<b>0.283</b>

**DEF:**

<b>RATE CLASS</b>	<b>ECRC FACTORS</b>
Residential	0.028 cents/kWh
General Service Non-Demand @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.027 cents/kWh 0.027 cents/kWh 0.026 cents/kWh
General Service 100% Load Factor	0.024 cents/kWh
General Service Demand @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.025 cents/kWh 0.025 cents/kWh 0.025 cents/kWh
Curtable @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.022 cents/kWh 0.022 cents/kWh 0.022 cents/kWh
Interruptible @ Secondary Voltage @ Primary Voltage @ Transmission Voltage	0.023 cents/kWh 0.023 cents/kWh 0.023 cents/kWh
Lighting	0.020 cents/kWh

**TECO:**

<b><u>Rate Class</u></b>	<b><u>Factor (¢/kWh)</u></b>
RS	0.138
GS, CS	0.135
GSD, SBF	
Secondary	0.130
Primary	0.129
Transmission	0.128
GSLDPR	0.123
GSLDSU	0.120
LS1, LS2	0.113
Average Factor	0.133

**ISSUE 8: What should be the effective date of the new environmental cost recovery factors for billing purposes?**

The factors shall be effective beginning with the specified environmental cost recovery cycle and thereafter for the period January 2022 through December 2022. Billing cycles may start before January 1, 2022 and the last cycle may read after December 31, 2022, so that each customer is billed for twelve months regardless of when the adjustment factor became effective. These charges will continue in effect until modified by the Commission.

**ISSUE 9: Should the Commission approve revised tariffs reflecting the environmental cost recovery amounts and environmental cost recovery factors determined to be appropriate in this proceeding?**

Yes. The Commission shall approve revised tariffs reflecting the environmental cost recovery factors determined to be appropriate in this proceeding. Staff shall verify that the revised tariffs are consistent with the Commission's decision.

**ISSUE 10: Should this docket be closed?**

No. While a separate docket number is assigned each year for administrative convenience, this is a continuing docket and shall remain open.

Florida Power & Light Company (Company-Specific Issues):

**ISSUE 11: Should the Commission approve FPL's Miami-Dade Clean Water Recovery Center Project for cost recovery through the Environmental Cost Recovery Clause?**

In accordance with Section 366.8255(1)(d)9., F.S., FPL shall be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed Miami-Dade Clean Water Recovery Center Project. The total capital costs are estimated to be approximately \$315 million, incurred between August 2021 and the end of 2025.

O&M expenses are not anticipated until the facility becomes operational (estimated to be at the end of 2024). Thereupon, FPL shall be allowed to recover prudently-incurred O&M expenses that exceed \$6.5 million on an annual basis.

**ISSUE 12:** How should any approved Environmental Cost Recovery Clause costs associated with FPL's Miami-Dade Clean Water Recovery Center Project be allocated to the rate classes?

O&M and Capital costs associated with FPL's proposed Miami-Dade Clean Water Recovery Center Project shall be allocated to rate classes based on 100% CP Demand.

**ISSUE 13:** Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed modification to its Lowest Quality Water Source Project?

In Order No. PSC-03-1348-FOF-EI, the Commission approved cost recovery of FPL's Lowest Quality Water Source Project through the ECRC. The proposed modifications to the Lowest Quality Water Source Project meet the criteria for recovery through the ECRC and the associated costs shall be approved.

**XI. PENDING MOTIONS**

There are no pending motions at this time.

**XII. PENDING CONFIDENTIALITY MATTERS**

There are no pending confidentiality matters at this time.

**XIII. POST-HEARING PROCEDURES**

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

**XIV. RULINGS**

Opening statements, if any, shall not exceed three minutes per party.

It is therefore,

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 27th day of October, 2021.



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ANDREW GILES FAY  
Commissioner and Prehearing Officer  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CWM/JDI

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Subsection 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

## ATTACHMENT A

### **Requirements related to providing Cross-Examination Exhibits prior to Hearing**

By October 25, 2021, each party must provide the Commission Clerk an electronic copy of all cross-examination exhibits, including impeachment exhibits, the party plans to use during the hearing. All cross-examination exhibits must be provided to the Clerk's Office on either USB flash drives or CDs. Confidential documents must be placed on one USB flash drive or CD, and non-confidential exhibits must be placed on a different or separate USB flash drive or CD. This is because the Clerk's Office will process the confidential exhibits, and will transmit all non-confidential exhibits to the General Counsel's Office for processing. All USB flash drives or CDs provided to the Clerk's Office must be clearly labeled as confidential or non-confidential, and the label must also include the Docket Number(s) and the name of the party providing the exhibits.

Each party must also provide to the Clerk by October 25, 2021, a table listing the exhibit numbers and short titles of each cross-examination exhibit provided to the Clerk. Pursuant to Rule 25-22.006(3), F.A.C., a notice of intent to request confidential classification must be filed for all confidential information.

Each party must pre-number each exhibit with the following sequential numbering system that clearly denotes confidential exhibits. For example, DEF will pre-identify its cross-examination exhibits DEF-1, DEF-2, DEF-3, etc. All confidential exhibits must include the letter "C" placed after the number. Thus, if DEF's third exhibit is confidential, it will be labeled DEF-3C.

Each exhibit must be saved as a separate electronic file, and each file must be labeled with the exhibit number that reflects the information contained in the exhibit. The exhibit number will serve as the filename in the virtual folder during the hearing. Each exhibit must also include a cover page that includes the exhibit number. In addition, each exhibit must include sequentially numbered pages. The page numbers must be placed in the upper right-hand corner of each page.

The confidential and non-confidential cross-examination exhibits will be made available to the parties in virtual folders the day before the hearing. The cross-examination exhibits will be made available to the parties for the sole purpose of providing the witnesses and their counsel with the opportunity to print the exhibits or download them to their electronic devices for use during the hearing.<sup>2</sup> The parties must not view or read the exhibits prior to the hearing. Parties will be provided usernames and passwords by Commission staff that will give them access to the confidential exhibits and any other confidential information that will be used during the hearing.

By October 25, 2021, parties must provide the Commission Clerk with the list of names of those persons who should be given a user name and password to access confidential information.

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<sup>2</sup> Microsoft Chrome is the best internet browser to use to access the virtual folder.